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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2019 / 2020 SESSION

UCP4612 – CRIMINAL PROCEDURE I

(All Sections / Groups)

15 OCTOBER 2019

Reading Time: 9.00 a.m. – 9.15 a.m.

(15 Minutes)

Answering Time: 9.15 a.m. – 12.15 p.m.

(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes only in their question paper. Students then have the remaining **three hours** in which to answer the questions.
2. This question paper consists of 5 pages with 5 questions only.
3. Attempt **ALL** questions in **PART A** and any **ONE** question in **PART B**. The distribution of the marks for each question is given.
4. Students are only allowed to bring in **CLEAN AND ORIGINAL COPY** of the following statutes into the exam venue:
 - i. Criminal Procedure Code; and
 - ii. Penal Code“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Write all your answers in the Answer Booklet provided.

PART A: Attempt ALL questions.**QUESTION 1**

SP1 (an inspector), SP3 (a lance corporal) and another policeman went to see SP2 (shop's supervisor) on the second floor of the shop as a result of SP2's call. The three police officers went to the ground floor and they approached Natsu after SP2 had pointed him out to SP1. As the police were about to arrest Natsu, he ran away and SP3 chased and arrested him after a struggle.

Natsu was searched and in his T-shirt pocket were found two credit cards (P2 & P3) and a receipt (P4). At the police station, SP1 prepared the search list and lodged a Police Report No. 01/18.

When the trial commenced, Natsu faced one charge of cheating under s.420 of the Penal Code and another of being in possession of a forged valuable security with intent to use it as genuine, an offence under s. 474 of the Code. The learned judge had admitted the search list made by SP1. There was an allegation that the receipt P4 had been fabricated because it had been typed in later. SP1 gave an explanation that after he had typed the report he realized that he had forgotten to type in about the receipt so he typed the particulars in search list. The learned judge accepted his story and referred to the search list prepared by SP1 for corroboration of SP1's story on the matter. In the search list, there was a signature acknowledging receipt of the list. SP1's evidence was that it was the appellant's signature.

The defence sought to be given a copy of Police Report No. 01/18 and in alternative to have the case to be struck out as there was no police report lodged by P2. The Deputy Public Prosecutor however, strenuously objected to the said application.

- (a) Advise the Deputy Public Prosecutor on the grounds of objection against the defence's application.

(17 marks)

- (b) The case went for appeal. One of the grounds of appeal is that the search list failed to comply with s.64 of the Criminal Procedure Code and should not have been admitted as it amounted to a confession. Advise the Deputy Public Prosecutor.

(8 marks)

(Total: 25 Marks)

Continued...

QUESTION 2

Answer all parts of this question.

- (a) On 24 April 2018, Laxus made a report to the Police accusing one Makarov of assaulting him and of robbing him of certain articles. Makarov was in consequence taken and duly charged before the Magistrate's Court. The charge was not proceeded with and was withdrawn on instructions from the DPP. Subsequent investigations revealed that Laxus had falsely fixed up Makarov and he was in due course arrested and charged in the Sessions Court under s. 211 of Penal Code.

During cross-examination by the defence counsel, the learned Judge realised that the Public Prosecutor had not given his sanction. The learned Judge decided to terminate the proceedings and discharged Laxus. The sanction of the Public Prosecutor was then obtained and Laxus was again charged with committing the same offence. At the outset of the hearing, two preliminary point of law were raised, namely:

- (i) Whether the first trial was a nullity because it had proceeded without a sanction of the Public Prosecutor?
- (ii) Whether the Court has power to question the validity of a sanction once it has been given?

As the Judge in this case, state your decision on these points of law.

(15 marks)

- (b) Lana is a new Deputy Public Prosecutor. She wishes to know the law regulating the prosecution of an accused person under s. 376 of the Criminal Procedure Code where she intends to call a witness who is minor to testify against the accused person.

Advise Lana on the relevant laws on the issue of proceeding in open court and in camera.

(10 marks)

(Total: 25 Marks)

Continued...

QUESTION 3

Answer all parts of this question.

- (a) Amadeus was charged in the Session Court for an offence of corruption. The Deputy Public Prosecutor, Bedlam, appeared for the prosecution. Bedlam tendered to the court a certificate issued by the public prosecutor certifying that the case should be transferred to the High Court for trial.

Analyse the criminal procedure on the above issue in light of the development of laws in Malaysia.

(15 marks)

- (b) Azman was brought before the Magistrate Court for an offence under s. 39B of the Dangerous Drugs Act 1952. The charge was read and explained to Azman but no plea was taken. Azman was then remanded. Subsequently, the Deputy Public Prosecutor received the chemist report which confirmed that the substance suspected to be dangerous drugs found in Azman's possession was upon analysis, found to be 30 grams of heroin. The Deputy Public Prosecutor then tendered an amended charge under s. 39B of the Dangerous Drugs Act 1952 and made an application to that Magistrate Court for the case to be transferred to the High Court for trial.

Analyse the criminal procedure on the above issue in light of the development of laws in Malaysia.

(10 marks)

(Total: 25 Marks)

Continued...

PART B:

Instruction: Attempt **ONE** question only.

QUESTION 4A

Sanjay was charged with an offence under s. 409 of the Penal Code for criminal breach of trust of RM100,000 belonging to Syarikat Pocky Glico Sdn. Bhd. which reads as follows:

That you in 2016 in Melaka being an agent or public servant to wit, Chief Executive Officer of Syarikat Pocky Glico Sdn. Bhd, and in such capacity entrusted being in any manner entrusted with property or with dominion over certain property, to wit, the fund of the said company, committed criminal breach of trust in respect of a large sum of money of the said property and that you have already committed an offence.

With reference to statutory provisions and decided cases:

- (a) Explain the legality of the above charge.
(10 marks)
- (b) Explain if s. 167 of the Criminal Procedure Code be applicable to the above case?
(10 marks)
- (c) Examine the circumstances when more person than one, who are accused of different offences, be charged and tried jointly.
(5 marks)

(Total: 25 Marks)

Continued...

QUESTION 4B

On 27.9.2019, at about 10.00pm, Lee and Liv broke into and entered Supre Jewellery Sdn. Bhd. at Lot. 888, Jalan Sangat Miskin, Sentul, Kuala Lumpur and stole jewellery worth RM300,000.

Acting upon information received, the police arrested Lee and Liv. Lee and Liv were remanded for 7 days. At the expiry of the remand period, Lee and Liv were jointly charged in the Sessions Court at Kuala Lumpur.

The charge read as follows:

That you in September 2019, at Supre Jewellery Sdn. Bhd., Kuala Lumpur, did break into and entered into the said premises and stole RM300,000 worth of jewellery belonging to Supre Jewellery Sdn. Bhd. and that you have thereby committed an offence punishable under s. 457 of the Penal Code.

Lee and Liv pleaded not guilty to the charge and the case is fixed for hearing on 1.11.2019. Counsel for Lee and Liv intends to raise preliminary objections on the validity of the charge.

With reference to statutory provisions and decided cases:

(a) Explain the legal issues applicable on the validity of the charge.

(13 marks)

(b) Draft a proper charge against Lee and Liv based on the above facts.

(12 marks)

(Total: 25 Marks)

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